

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TELMARK PACKAGING
CORPORATION,

Plaintiff

v.

NBTY MANUFACTURING, LLC
(improperly pled as Nutro Laboratories and
Nature's Bounty),

Defendant.

Honorable Garrett E. Brown, Jr.

Civil Case No.: 05-3049 (GEB)

Civil Action

ORDER

RECEIVED

MAY 29 2008

AT 8:30 _____ M
WILLIAM T. WALSH

THIS MATTER having been opened to the Court upon the application Kenneth Cesta, Esq., of Edwards Angell Palmer & Dodge LLP, counsel for the defendant, NBTY Manufacturing, LLC (improperly pled as Nutro Laboratories, "Defendant") to compel plaintiff Telmark Packaging Corporation ("Plaintiff") to produce certain documents and to comply with this Court's Order entered on April 29, 2008; upon notice to Sean F. Byrnes, Esq. of the law firm Byrnes Kirkwood, LLP, counsel for Plaintiff, and counsel for the parties having consented to the relief set forth herein; and for good cause shown for the entry of this Order:

IT IS on this 29 day of MAY, 2008

AGREED AND ORDERED as follows:

1. Plaintiff shall make available at Plaintiff's business office, for inspection and for the purpose of printing reports, the Plaintiff's complete and true QuickBooks accounting records maintained by Plaintiff in the ordinary course of its business and covering the time period from January 1, 2007 through the present. Defendant shall have access in the QuickBooks records to the following: all schedules, summaries, work sheets, profit and loss statements, statements of income and expenses, sales and expense

compilations and statements, balance sheets, Job Profitability Reports (updating previous reports through 2007), and all other financial statements that can be accessed and printed from Plaintiff's QuickBooks files. Plaintiff shall make the QuickBooks database available for accessing and printing the aforementioned documents upon seven (7) business days notice to Plaintiff's counsel. Defendant shall pay reasonable copy costs for the copies of the documents and/or files requested by Defendant. Plaintiff shall be permitted to designate documents and/or files to be produced from its QuickBooks files as "Confidential" pursuant to the terms of the Protective Order entered in this matter, provided that the documents qualify as "Confidential" under the Protective Order. In addition, Plaintiff shall have the right to redact all information in any documents printed by the Defendant that contain identifying customer information of the Plaintiff, provided that Defendant reserves its right to request production of any redacted information after the mediation in this matter.

2. On or before July 25, 2008, Defendant shall serve any and all supplemental expert reports on the issue of damages.

3. Depositions of all expert and fact witnesses on the issues of damages shall be completed no later than August 29, 2008. Plaintiff shall produce Eric Ludwig and its sole testifying expert Roy H. Kvalo, for a deposition at the offices of its counsel in this matter on mutually agreeable dates prior to August 29, 2008. Plaintiff reserves its right to serve a deposition notice upon Defendant for an appropriate representative with regard to the damages issue, which deposition shall take place prior to August 29, 2008.

4. In light of the pending mediation and in furtherance of mediation efforts, and in light of the fact that Plaintiff has not yet received Defendant's supplemental expert report, Plaintiff reserves its right post-mediation to apply to the Court for relief on its

demand for more responsive interrogatory responses and documents relevant to the profits made by Defendant on the Hartz business since Defendant's termination of its Agreement with Plaintiff.

5. There will be a telephonic case management conference before the Honorable Tonianne J. Bongiovanni, U.S.M.J. on August 5, 2008 at 10:00 a.m. Plaintiff shall initiate the call. A dispositive motion schedule and final pretrial conference shall be set at this time.


HON. TONIANNE J. BONGIOVANNI, U.S.M.J.

The undersigned attorneys hereby consent to the form, content and entry of the within Order.

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BY: 
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